

7-7461

OGC Has Reviewed

23 December 1955

MEMORANDUM FOR: Director of Central Intelligence

SUBJECT: Use of Official Car

1. You may recall that I spoke to you about a case that bothered us somewhat in connection with utilization of your official car. There is no question that you are authorized to use this car or any Agency car as you deem proper. However, in this case the defendant, even though authorized to use the car at all times, was deemed by the court to be using the car for private purposes and was held personally liable for damages arising out of an accident in which his driver was negligent. Phelps v. Boone et al, 67 F. 2d, 574, certiorari denied. Since this case, which was decided in 1932, the District of Columbia Code has been amended to provide that if a motor vehicle is operated by a person other than the owner with the owner's consent, the operator is deemed to be the agent of the owner. This, combined with the Tort Claims Act, which was also enacted since the Boone case was decided, would today place liability on the United States. However, Maryland and Virginia have no similar statute imputing liability to the owner. Therefore, even though we believe the Boone case is disputable as a matter of law, it is conceivable that a court applying either Maryland or Virginia law might apply the Boone decision if a finding were made that you had used your official car for purely personal purposes.

2. We have discussed this situation with the Department of Justice, which takes the position that it will defend any case arising while the car is used for official business but will not defend if the use is deemed personal. We have also discussed this with your insurance company in New York through Miss Snyder on the assumption that the risk would be so negligible that they would be willing to cover it by a rider to your existing policy. However, they have not been willing to accept this and state that additional coverage would involve a premium of about \$32.00 a year.

3. We understand that you make but limited use of your official car outside of business hours. We believe on the other hand that you have wide discretion to determine what utilization is connected with

official business. If, therefore, you feel that the utilization you make of the car could be certified as being in the course of or connected with official business, we believe there is a minimum risk that any court would apply the doctrine of the Boone case to hold you personally liable for an accident involving negligence on the part of your driver. Under these restrictive circumstances, it would seem that the expense of \$32.00 for additional insurance coverage would not be warranted.

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LAWRENCE R. HOUSTON
General Counsel